U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 24

LIN 03 259 50797

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Marie Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was a postdoctoral research associate at the University of Nebraska Medical Center (UNMC). The petitioner's title has since been changed to, simply, "research associate." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel states:

> Since [she] came to the United States in 2000, [the petitioner] has been conducting research as [a] postdoctoral research fellow at the University of Nebraska Medical Center on the effects of alterations in central nervous system mechanisms in diabetes mellitus and cardiovascular disease, that are of major public health concerns. . . .
>
> [The petitioner] has produced numerous contributions that significantly impacted his [*sic*] field of research on cardiovascular physiology, particularly in the area of neural control of circulation during diseases for better understanding of diabetes and related cardiovascular diseases. . . .Her remarkable achievements and huge potential in the field of cardiovascular physiology . . . have been recognized by the international community of her field. . . .
>
> [The petitioner's] innovative and novel contributions . . . prove her ability to make unprecedented, unparalleled, and vital contributions to the national interest.

Eight witness letters accompany the petitioner's initial filing. We shall discuss examples of these letters below. Half of the witnesses have supervised or collaborated with the petitioner in some way.

Professor [redacted] of UNMC describes the petitioner's current work:

> [The petitioner] has worked in our department for nearly three years conducting important research into the effects of alterations in central nervous system mechanisms in diabetes mellitus and other cardiovascular diseases that are of major public health concern. . . . [The petitioner] did a preliminary study in my laboratory during her first year where she examined the effect of introducing specific compounds such as L-NMMA, inhibitor of nitric oxide synthase, in the paraventricular nucleus (PVN) on renal sympathetic nerve discharge. We believe that research on the effects of PVN on renal sympathetic nerve discharge can lead to new and better treatments of diabetes mellitus and cardiovascular disease. She obtained . . . the first physiological evidence demonstrating a role for nitric oxide in the PVN on sympathetic outflow and her research created an important avenue of investigation in finding the cause and treatment of diabetes mellitus.

Prof. [redacted] indicates that the petitioner has received grant funding to study "the role of central NMDA receptors within the PVN during diabetes mellitus," but does not indicate that the petitioner has made any progress in this area as of the date of Prof [redacted] letter. Rather, Pro [redacted] refers to the funded project as "proposed research."

Professor of Wayne State University states: "I have been following [the petitioner's] recent work. I have read her grant, papers and curriculum vitae. Therefore, I feel that I know her well, understand her long-term goals, and thus can accurately attest to her strengths as an outstanding researcher." Professor [redacted] in his letter, does not mention that he and the petitioner collaborated on a published article (included in the record as Exhibit 16).

Four of the letters are from individuals with no evident connection to the petitioner. Dr. [redacted] chief of the Clinical Neurocardiology Section at the National Institute of Neurological Disorders and Stroke, calls the petitioner "a gifted researcher with unique and extraordinary skills." Dr. [redacted] also states that the petitioner "has not worked with me. I checked [redacted] and did confirm that she has indeed published two papers with Dr. [redacted] as lead author, in confirmation of the documentation she sent me." When considering the petitioner's reputation within the field, and the impact of her published work, we cannot ignore that Dr. [redacted] was apparently unaware of the petitioner's published work until the petitioner contacted Dr. [redacted], who subsequently verified the existence of those publications.

Several of the witness letters follow the same basic format: The witnesses discuss their own credentials; praise the petitioner as a gifted researcher; stress the importance of diabetes research; discuss the petitioner's credentials and her current work; assert that the petitioner's grant funding from the American Heart Association is a rare privilege; and conclude by asserting that the petitioner's unique abilities qualify her for a waiver.

The similarities, in some instances, extend to the wording of the letters. For example, two letters contain the same exact passage, indicating that the petitioner "successfully completed her resident training and became an attending physician. She did nearly 250 cardiopulmonary bypass cases every year and successful rate is 100%. During this period, she also performed a lot of clinical studies related to the myocardium and cerebral

protection during heart surgery." Other passages are either identical or contain only trivial differences (such as the substitution of a pronoun for the petitioner's name).

Some witnesses do not indicate how they know of the petitioner's work. Apart from the petitioner's own collaborators, no witnesses specify that they already knew of the petitioner's work before the petitioner contacted them for letters.

Dr. [redacted] asserts that the petitioner "has been a member of several scientific societies including the American Physiological Society, the American Heart Association, and the Neuroscience Society. One can not become [a] member without making outstanding achievements in the respective fields." The petitioner documents her membership in the three named associations, but nothing in the record corroborates the claim that "outstanding achievements" are a basic requirement for membership. The petitioner has submitted a printout from the American Heart Association's website (http://www.americanheart.org) indicates that there are "[o]ver 31,000 members" and invites readers to "Become a Member – Sign Up or Renew Today!" There is no indication of particularly stringent membership requirements. The open invitation to "sign up" and the large membership size both suggest relatively loose membership standards.

The petitioner has submitted a letter from an official of the Society for Neuroscience, indicating that the society is "the world's largest organization of scientists dedicated to the study of the brain, spinal cord, and peripheral nervous system," with "over 31,000 members to date." It is not clear how the Society for Neuroscience could become "the world's largest organization of its kind" while requiring "outstanding achievements." It appears, therefore, that Dr. [redacted] letter contains exaggerations that undermine the credibility of the assertions in that letter. Given these exaggerations, there is no particularly strong reason to believe that the petitioner's grant from the American Heart Association is in fact the rare honor it is claimed to be, rather than more or less typical financial support for a postdoctoral researcher. More generally, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

The director instructed the petitioner to submit additional evidence, including documentation to show that other researchers have cited the petitioner's published work. In response, the petitioner submits documentation of various awards she has received, generally for postdoctoral researchers or "junior investigators." These awards amount to recognition from professional organizations for the petitioner's contributions to the field. In this regard, we note 8 C.F.R. § 204.5(k)(3)(ii)(F), which indicates that evidence of such recognition can form part, but not all, of a claim of exceptional ability. Exceptional ability, in turn, is not sufficient to warrant a national interest waiver, as shown by the plain wording of the statute at section 203(b)(2)(A) of the Act. Therefore, the awards are not strong *prima facie* evidence of eligibility for the waiver.

In a new letter, Prof. [redacted] states that the petitioner's departure "would be a major interruption in our project," which in turn is funded over a five-year period. Temporary involvement in a single project is feasible under a

nonimmigrant visa; the petitioner's involvement to date has been under such an arrangement. Denial of the national interest waiver does not invalidate the nonimmigrant visa or void the petitioner's nonimmigrant status. To show that she should receive permanent immigration benefits, the petitioner must do more than simply show that she is an important part of one closed-ended project; she must demonstrate a sustained record of past achievement that would justify expectations of continued future benefit.

With regard to the director's request for evidence of citations, the petitioner submits copies of eight articles that cite her work. Three of these citations are self-citations by the petitioner and/or her collaborators. The petitioner also submits statistical information about the impact factors of the journals in which the citations appeared. This information does not indicate that a career total of five independent citations demonstrates unusually significant impact within the petitioner's field.

The director denied the petition, stating that the evidence submitted does not distinguish the petitioner from other researchers to an extent that would justify the special benefit of a national interest waiver. On appeal, the petitioner asserts that the director failed to give due consideration to various claims. For instance, the petitioner asserts that her fellowship from the American Heart Association is "highly competitive" with only 15-20% of the applications being approved. The petitioner does not cite any source for these figures; the documentation informing her of the approval of her fellowship does not show such figures. The petitioner also fails to show that these percentages are unusually small, or that a postdoctoral researcher's reliance on competitive grant funding is the exception rather than the norm in academia.

The petitioner submits additional witness letters. As shown above, in the case of one witnesses' unrealistic portrayal of the membership requirements of certain professional societies, witness letters are not always the most reliable means of establishing objective facts.

One of the new letters on appeal is from Professor [redacted] of the University of Missouri-Columbia. A previous letter from Prof. [redacted] had accompanied the petitioner's initial submission. The new letter is, essentially, a revision of that previous letter. Large sections of the new letter have simply been copied verbatim from the older letter. In the original letter, Prof. [redacted] had stated that the petitioner's "work is likely to make important new contributions." In the new letter, Prof. [redacted] changes this phrase, stating that the petitioner's "work will continue to make important new contributions." In the same paragraph, the phrase "the entire population of the United States" has been changed to "the a huge percentage of American citizens" (*sic*).

Other witnesses now work in various countries but have collaborated to varying degrees with the petitioner's mentor, Prof. [redacted] Dr. [redacted] of the University of Birmingham, United Kingdom, appears to be the most independent new witness on appeal. Dr. [redacted] deems the petitioner's work to be "outstanding and of practical significance for developing preventive strategies for Americans, especially for diabetic patients, which have higher risk of developing cardiovascular diseases."

The evidentiary weight of the letters has been somewhat compromised for reasons already discussed. The record does not contain significant first-hand documentary evidence to corroborate witnesses' (sometimes demonstrably exaggerated) claims regarding the importance and influence of the petitioner's work. While the

witnesses clearly see promise in the petitioner's work, and there is no doubt that the petitioner is a qualified researcher performing meritorious work, the present petition appears to be premature at best.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.